

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

ROBERT VON WOLFFRADT
CHIEF INFORMATION OFFICER

FINAL AGENCY DECISION

Docket No. 17OCIO006

February 20, 2017

Palmer Mutual Telephone Company
c/o Steve Trimble
PO Box 155
306 Main St
Palmer, IA 50571

Dear Mr. Trimble,

In response to the Notice of Appeal (“**Appeal**”) filed by you on behalf of Palmer Mutual Telephone Company (“**Appellant**”) pursuant to Iowa Administrative Code rule 129—20.5(1), the Office of the Chief Information Officer of the State of Iowa (“**Office**”) has conducted an internal review of all relevant evidence and information both submitted by you in connection with the Appeal and otherwise available to the Office related to the census blocks forming the basis of your Appeal. *See* Iowa Admin. Code r. 129—20.5(4). Following its review of the entire record before it, the Office issues the following **FINAL AGENCY DECISION** (“**Decision**”). Iowa Admin. Code r. 129—20.5.

I. ISSUE(S) ON APPEAL.

Whether the Office correctly determined the census blocks forming the basis of this Appeal do or do not constitute “Targeted Service Areas” (“**TSAs**”)¹ as defined by Iowa Code section 8B.1(12).

II. BACKGROUND FACTS, LAW, AND PROCEEDINGS.

Iowa Code section 427.1(40) creates a one hundred percent property tax exemption (“**Exemption**”) for “the installation of broadband infrastructure that facilitates broadband service at or above twenty-five megabits per second of download speed and three megabits per second of upload speed commenced and completed on or after July 1, 2015, and before July 1, 2020, in a [TSA], and used to deliver internet services to the public.” *Id.* (a)–(c). This Exemption is jointly administered by local county assessors, the Iowa Department of Revenue, and the Office. *Id.* The Office’s primary role in the program is to certify two things things for Communication Service Providers (“**Providers**”) seeking an Exemption:

¹As used in this Decision, the term “**non-TSA**” shall refer to a census block that does not constitute a “Targeted Service Area” as defined by Iowa Code section 8B.1(12).

1. That “pursuant to [Iowa Code] section 8B.10 . . . the installation is being performed or was completed in a [TSA]”; and
2. “[T]hat [the] broadband infrastructure installed in a [TSA] facilitates broadband service at or above twenty-five megabits per second of download speed and three megabits per second of upload speed.”

Iowa Code § 427.1 (40)(f)(1)(d).

In July of 2016 the Office published the State of Iowa Broadband Availability Map (“**Broadband Map**”) online.² Iowa Admin. Code r. 129—20.4. The Broadband Map identified TSA’s within the State at the census block level. Iowa Code section 8B.1(12) defines a TSA as: “a United States census bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above twenty-five megabits per second of download speed and three megabits per second of upload speed as of July 1, 2015.” In other words, a TSA is a census block within the State that, as of July 1, 2015, was underserved in terms of access to and/or availability of high-speed internet access—specifically, broadband service at or above twenty-five megabits per second of download speed and three megabits per second of upload speed (“**25/3**”). *Id.* Providers applying for “[C]ertification from the [O]ffice . . . pursuant to [Iowa Code] section 8B.10 that the installation is being performed or was completed in a [TSA]” would receive such certification if the installation forming the basis of the Provider’s Application for Certification occurred within a TSA as designated on the Broadband Map. Iowa Code § 427.1 (40)(f)(1)(d).

In generating the Broadband Map, the “[O]ffice utilized broadband availability maps and corresponding data sources made available by Connect Iowa, LLC, a subsidiary of Connected Nation, Inc.” Iowa Admin. Code r. 129—20.3. “Such maps and data sources were widely accepted for accuracy and made available for public review and comment.” *Id.*; *see also* Iowa Code § 8B.10(1) (“The determination of whether a communications service provider offers or facilitates broadband service meeting the download or upload speeds specified in the definition of [TSA] in section 8B.1 shall be determined or ascertained by reference to broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment and that are identified by the office by rule.”); <http://www.connectiowa.org/mapping/faqs> (“There are several planned and ongoing phases to the verification of broadband data being collected, including provider verification, consumer verification, and field verification. . . . We rely on citizen feedback to verify the accuracy of the broadband inventory maps. Please send us your feedback We respond to all inquiries and incorporate relevant information on an ongoing basis.”).

In addition, the Office was required to “establish procedures to allow challenges to the [O]ffice’s finding on whether an area meets the definition of [a] [TSA].” Iowa Code § 8B.10(2). Thus, as set forth by Iowa Administrative Code rules 129—20.4 and 20.5, the Office established November 30, 2016, as the official and final publication date of the map, and established an appeal process whereby “[w]ithin

²Currently available at <https://ocio.iowa.gov/broadband>.

20 days after [November 30, 2016], any person or party aggrieved or adversely affected by [the Office's determination of whether a census block constitutes a TSA] [could] challenge the Office's finding by filing a notice of appeal with the office," Iowa Administrative Code rule 129—20.5(1).

The notice of appeal was required to set forth:

(a) The name, address, telephone number, and e-mail address of the person or party [appealing the Office's designation];

(b) The particular census block designation the person or party [was] challenging by stating:

1. The census block number as provided on the [Broadband Map];

2. The county in which the census block [was] located as provided on the [Broadband Map];

(c) The manner in which the person or party [was] aggrieved or adversely affected by the [O]ffice's determination; and

(d) The grounds upon which the appeal is based.

Iowa Admin. Code r. 129—20.5(1)(a). In addition, accompanying the notice of appeal, appellants were required to supply the Office with "*all* evidence and information necessary to support the appeal." *Id.* (b) (Emphasis added.).

After expiration of the initial twenty-day appeal window, the Office was to post any notices of appeal received online at <http://ocio.iowa.gov>. *Id.*(3). Thereafter, "any [other] affected persons or parties [would] have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal." *Id.* After expiration of this second twenty-day submission window, the Office would "consolidate all appeals involving the same census block and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties . . . , the maps and data sources originally utilized in [creating the Broadband Map], and any other information deemed relevant by the office." *Id.* (4). Thereafter, the Office would issue a final agency decision stating the reasons for the Office's decision concerning the census block(s) in question." *Id.* (5).

On December 19, 2016, within the initial twenty-day window, Appellant filed this Appeal. Therein, Appellant challenged the Office's determination with respect to seventy-eight (78) census blocks located in Pocahontas and Webster County, identified in **Exhibit A** and **Exhibit B**, attached hereto. With respect to each of the these census blocks Appellant stated: "As of June 30, 2015 no provider, including Palmer Mutual Telephone Company, was providing broadband service in the identified census blocks at a speed above 25 megabits per second of download speed." Appellant requested that each of these census blocks be designated as TSAs.

On January 30, 2017, the Office posted Appellant's Appeal online. *Id.*(3). Over the course of the next twenty days, "[no other] affected persons or parties . . . submit[ted] evidence and information in support of, or in opposition to, such appeal." *Id.* The Office subsequently conducted an internal review

of all relevant evidence and information both submitted by Appellant in connection with the Appeal and otherwise available to the Office.

III. DECISION(S) AND REASONING.

- **BLOCK IDs listed in Exhibit A.**

- **SUMMARY: APPEAL GRANTED.** The Office will designate these blocks as TSAs due to Appellant's confirmation that Appellant did not offer or facilitate 25/3 in any of these census blocks as of July 1, 2015.
- **DETAILED RESPONSE:** With respect to census blocks identified in Exhibit A, designated as non-TSAs at the time of the filing of this Appeal, the Office has reviewed the evidence and information submitted by Appellant related thereto, in conjunction with the maps and data sources originally utilized in determining whether the census blocks were TSAs. Iowa Admin. Code r. 129—20.5(4); *see also* Iowa Admin. Code r. 129—20.3. The Office agrees with Appellant that these census blocks should be designated as TSAs. Upon further review, the data sources originally utilized by the Office show the Office's original determination was based on Appellant's own prior reporting that it, as of July 1, 2015, offered or facilitated 25/3 in these census blocks. Appellant now advises the Office that this data is incorrect, and that Appellant did not offer or facilitate 25/3 in these census blocks as of July 1, 2015. The Office credits Appellant's written statements. Thus, based on the evidence and information available to the Office, the Office concludes these census blocks should be TSAs.

- **BLOCK IDs listed in Exhibit B.**

- **SUMMARY: APPEAL DENIED.** The Office concludes these census blocks should remain designated as TSAs. Data shows one or more Providers, other than Appellant, offered or facilitated 25/3 within these census blocks.
- **DETAILED RESPONSE:** With respect to the census blocks identified in Exhibit B, designated as a non-TSAs at the time of the filing of this Appeal, the Office has reviewed the evidence and information submitted by Appellant related thereto, in conjunction with the maps and data sources originally utilized in determining whether the census blocks were TSAs. Iowa Admin. Code r. 129—20.5(4); *see also* Iowa Admin. Code r. 129—20.3. The maps and data sources originally utilized in determining whether the census block was a TSA show the Office's original determination that these census blocks are non-TSAs must be upheld. Specifically, these data sources show that, as of July 1, 2015, one or more Providers, other than Appellant, offered or facilitated 25/3 within these census blocks. Appellant has provided no evidence to show that these other Providers did not offer or facilitate 25/3 within these census blocks as of July 1, 2015. The Office concludes these census blocks should remain designated as TSAs.

IV. APPEALING FURTHER.

If you wish to appeal this Decision you should—within 30 days of the posting of this Decision at <http://ocio.iowa.gov/>—so notify us in writing at the following address:

Office of the Chief Information Officer
c/o Matt Behrens
Hoover State Office Building, Level B
1305 East Walnut Street
Des Moines, Iowa 50319

In so doing, please state the reason(s) you are appealing this Decision, specifically identifying the particular aspects of the decision with which you disagree and the reasons why, whether factual or legal in nature. If factual in nature, please identify the evidence or information upon which you are relying to support your claim. If legal in nature, please cite the controlling authority upon which you rely. Please also include the information required by Iowa Administrative Code rule 129—6.4.

Upon receiving your appeal, we will forward it to the Department of Inspections and Appeals where an Administrative Law Judge (“ALJ”) will perform an independent review. Iowa Admin. Code r. 129—20.6(1); Iowa Admin. Code r. 129—6.8(1). At that time, you will have an opportunity to make a presentation, in person or over the telephone, to an ALJ regarding the nature of your concerns. If you do not exercise your appeal right within 30 days of the posting of this Decision at <http://ocio.iowa.gov/>, this Decision is final and binding. Iowa Admin. Code r. 129—20.5(5).

If you have any questions about this process, please contact Tom Slaughter at (515) 322-1128.

Sincerely,



Matt Behrens
Deputy Chief Information Officer
State of Iowa

cc:

Tom Slaughter, Business Services Division, Office of the Chief Information Officer

Exhibit A

- 191517803002050; Pocahontas County
- 191517803002054; Pocahontas County
- 191517803002064; Pocahontas County
- 191517803002065; Pocahontas County
- 191517803002066; Pocahontas County
- 191517803002069; Pocahontas County
- 191517803002072; Pocahontas County
- 191517803002073; Pocahontas County
- 191517803002075; Pocahontas County
- 191517803002078; Pocahontas County
- 191517803002114; Pocahontas County
- 191517803002115; Pocahontas County
- 191517803002124; Pocahontas County
- 191517803002126; Pocahontas County
- 191517803002130; Pocahontas County
- 191517803002133; Pocahontas County
- 191517803002135; Pocahontas County
- 191517803002138; Pocahontas County
- 191517803002142; Pocahontas County
- 191517803002145; Pocahontas County
- 191517803002146; Pocahontas County
- 191517803002147; Pocahontas County
- 191517803002149; Pocahontas County
- 191517803002150; Pocahontas County
- 191517803002151; Pocahontas County
- 191517803002153; Pocahontas County
- 191517803002154; Pocahontas County
- 191517803002156; Pocahontas County
- 191517803002158; Pocahontas County
- 191517803002161; Pocahontas County
- 191517803002170; Pocahontas County
- 191517803002171; Pocahontas County
- 191517803002173; Pocahontas County
- 191517803002176; Pocahontas County
- 191517803002180; Pocahontas County
- 191517803002181; Pocahontas County
- 191517803002182; Pocahontas County
- 191517803002184; Pocahontas County
- 191517803002186; Pocahontas County
- 191517803002187; Pocahontas County
- 191517803002188; Pocahontas County
- 191517803002193; Pocahontas County

- 191517803002194; Pocahontas County
- 191517803002198; Pocahontas County
- 191517803002199; Pocahontas County
- 191517803002203; Pocahontas County
- 191517803002204; Pocahontas County
- 191517803002214; Pocahontas County
- 191517803002227; Pocahontas County
- 191517803002228; Pocahontas County
- 191517803002236; Pocahontas County
- 191517803002237; Pocahontas County
- 191517803002241; Pocahontas County
- 191517803002243; Pocahontas County
- 191517803002245; Pocahontas County
- 191517803002246; Pocahontas County
- 191517803002247; Pocahontas County
- 191517803002248; Pocahontas County
- 191517803002250; Pocahontas County
- 191517803002251; Pocahontas County
- 191517803002256; Pocahontas County
- 191517803002257; Pocahontas County
- 191517803002269; Pocahontas County
- 191517803002272; Pocahontas County
- 191517803002274; Pocahontas County
- 191517803002275; Pocahontas County
- 191517803002278; Pocahontas County
- 191517803002280; Pocahontas County
- 191517803002292; Pocahontas County
- 191517803002336; Pocahontas County
- 191517803002337; Pocahontas County
- 191870102001063; Webster County

Exhibit B

- 191517803002155; Pocahontas County
- 191517803002163; Pocahontas County
- 191517803002164; Pocahontas County
- 191517803002165; Pocahontas County
- 191517803002166; Pocahontas County
- 191517803002167; Pocahontas County